

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
Upon the relation and for the use of the)	
TENNESSEE VALLEY AUTHORITY)	
Plaintiff,)	
)	
v.)	<u>NO. 3:11-cv-0320</u>
)	Judge Wiseman
AN EASEMENT AND RIGHT OF WAY)	
OVER 3.86 ACRES OF LAND MORE OR)	
LESS, IN SUMNER COUNTY, TENNESSEE)	
)	
EZMA GRAY,)	
Defendants.)	

ORDER ON MOTION TO EXCLUDE

Plaintiff has filed a Motion to Exclude Expert Report and Testimony of Russell Parrish, (Doc. No. 26). This Motion was filed February 26, 2013. The Defendant sent the report via UPS to the Plaintiff and the Commission on February 28, 2013 and it was received March 4, 2013 because of UPS's delay. Plaintiff indicates it is harmed. Plaintiff cites two cases for the proposition that the Commission may exclude reports under "its broad discretion" to order sanctions including exclusion. See, *Campos v. MTD Products, Inc.*, 2009 WL 2252257 at p. 9 (M.D. Tenn. No. 2:07-cv-0029) and *Gentry v. Hershey Co.* 687 F. Supp. 711, 725 (M.D. Tenn. 2010). In *Gentry v. Hershey* there were two well represented clients with the ability to contest liability issues in state

and federal courts and hire experts over a period of four years. The Court there noted the Motion for Summary Judgment would have been granted even if the expert's late filed report had been admitted, ergo, there was no harm to the Plaintiff from excluding the report. Here if we were to exclude the report of Mr. Parrish there would either be a motion for continuance filed or the Defendant's case would largely disappear. Likewise in *Campos v. MTD* the reports at issue were disclosed "months after the discovery deadline". Here the delay is two weeks or only three days after the deadline for supplemental disclosures. The Commission sees no prejudice to Plaintiff from this delay. The Commission sees significant prejudice to the Defendant if this Motion to Exclude were granted. It is clearly within the discretion of the Commission to deny the Motion.

IT IS THEREFORE ORDERED that the Motion to Exclude is DENIED. To avoid any prejudice to the Government the deadline for supplemental disclosures by either party is extended until March 15, 2013. The discovery deadline previously ordered is EXTENDED until the day before the trial or March 20, 2013.

s/s Jack W. Derryberry, Jr.
Chairman, for the Commission